

**TOWN OF KITTERY
PLANNING BOARD MEETING**

Thursday, December 15, 2005

APPROVED

Council Chambers

Meeting called to order at: 6:15 pm

Present: Ernest Evancic, Ron Ledgett, Doug Muir, Megan Kline, Chairman White, Scott Mangiafico, Janet Gagner

Also Present: Planner Noel, Earledean Wells, Town Manager Jon Carter

1. ROLL CALL

Roll call noted.

2. PUBLIC COMMENT ON NON-AGENDA MATTERS

Lisa Comeau says she is here with respect to the physical therapy facility, so that is a non-agenda item.

Chairman White says that the square footage, parking, and everything but the use of a portion of the building as a physical therapy facility will be addressed in the agenda item. If she is addressing the use, then she can address the use. As for the physical building, the applicant will not come back and build another part of the building at a later date to accommodate the physical therapy component. He would suggest that it would be more organized if Ms. Comeau would address all of her concerns during the public hearing on the recreation center.

Ms. Comeau says thank you.

**3. PUBLIC HEARING: TF MORAN, INC. FOR HAROUT DERSIMONIAN, 178
HALEY ROAD. APPLICANT IS REQUESTING A MODIFICATION**

Chairman White introduces the application.

John Myhaver is representing Mr. Dersimonian and another who are the current owners of the lot and is here to explain what they would like to do. They currently own lot 39-3-1, which consists of the original lots 1 and 2. They would like to reintroduce lot 2. In 1991, if you look on the last page, they had lot 1, which has the existing residence, and created a total of nine lots, lot 1 being adjacent to the other. Lot 1 includes the frontage. He shows where it is. The total area of the current lot is sufficient to allow for two dwelling units on lot 1. Lot 2 is a stand alone lot. In 1999, lots 1 and 2 were purchased by Walter Earl and the buildings were changed somewhat, with a farmhouse in front and another house in the rear. He wanted to establish a third dwelling unit, so he combined lots 1 and 2 to get sufficient land for three houses. Then he sold the property to the current owners. The owners no longer have a tenant. They would like to reestablish lot 2 as a second lot standing on its own. Nothing has been built on this section of lot 2. They have provided lot calculations to show that it would still support another dwelling and that it is consistent with all the zoning regulations. That's the extent of the proposal.

Chairman White asks if there are any members of the public here to speak on this application.

Christine Carlson is just concerned as an abutter. Her concern is the size of home, how close it is to her home, the conservation land abutting, and what her rights are as to what they can do. She does not want to be looking out her back window at a 3,000 sf home. That's all she has to say. Chairman White asks if there are any other members of the public here to comment on this.

There are none.

Chairman White closes the public hearing and says that we will proceed to Board discussion of the matter. He solicits questions from the Board.

Planner Noel says that Mr. Myhaver did mention three units and that the applicant is ready to reduce the dwelling units from three to two. Is that correct?

Mr. Myhaver says that is correct. The applicant has taken steps to do that. The applicant has no plans to rent it out or have it as a separate unit.

Planner Noel has already spoken to the CEO on this.

Chairman White asks for the location of the septic. Does the lot have the capacity for that?

Mr. Myhaver says that they show the test pit from 1991 as test pit # 2 on lot 2 on the current proposal sheet. It's probably easier to see on the clear copies.

Mr. Ledgett asks for any recent soils work that has been done.

Mr. Myhaver provided the original soils work from 1991. They have not remapped the soils since then. They have not changed anything on the property.

Mr. Ledgett says the laws have changed.

Planner Noel asks if the applicant has determined whether there is 100' between the septic and existing wells? Is this town water?

It is confirmed this is town water.

Chairman White says so, no wells will be affected. It is all town water out here. He asks Planner Noel with respect to addressing the abutters question, whether the calculations are based on gross area.

Planner Noel says that we use gross area in the calculation. He does not know the maximum coverage in this area. He believes they would be entitled to a 3,000 sf home if a 3,000 sf home would fit in that building envelope. He would suspect the CEO would allow that.

Chairman White asks if it meets the current minimum lot size.

Planner Noel says yes.

Ms. Kline asks if this is in the rural residence zone.

Planner Noel says yes.

Ms. Kline says that the minimum side and rear yards are 20'.

Chairman White says that with the maximum building coverage allowed, and a 40,000 sf lot, that could be a big building. Does building coverage mean only that which is covered by a structure or does it include impervious area as well?

Mr. Ledgett wants to see the septic service design.

Planner Noel thinks the applicant did provide us with the test pit soil horizons.

Mr. Myhaver says that at present, he does not have a test pit or a septic service design for the lot.

Mr. Ledgett says this is not a single residence lot. This is a subdivision. It is an additional division of an existing and approved subdivision. The technical act here is modifying a subdivision as it stands today in 2005 to increase the number of lots in the subdivision.

Planner Noel says that as he understands it, the dark green lot was an original stand alone lot that was part of the subdivision. Mr. Earl came before the Planning Board and requested and was

granted approval to conjoin the two lots. The applicant is looking to redivide lot 1.

Mr. Ledgett thinks the history is not relevant. What we are really being asked to do here is to modify the subdivision to add a lot.

Mr. Myhaver says that the Board would not be increasing the capacity of the original subdivision.

Planner Noel says that the subdivision was originally approved for nine lots.

Mr. Ledgett asks for confirmation that we are operating under the current rules, rather than under the 1991 rules.

Planner Noel would agree with that.

Planner Noel says they have provided the soils data. No one would suspect the soils have changed. Whoever should buy the lot, it would be incumbent on them to run new tests. Perhaps the buyer would design the septic system accordingly.

Mr. Evancic asks if the applicant needs to have a septic design in place before coming before the Planning Board.

Chairman White thinks that the applicant needs that in conjunction with a building permit, but the ordinance does not require that as part of this package.

Planner Noel agrees. The minimum setback for septic with respect to wetland is 100'.

Ms. Kline asks if she is right that if the lot were to be subdivided, both lots will be in compliance with lot coverage issues.

Planner Noel and the applicant agree.

Mr. Ledgett reads the requirement for septic - "shall be provided" - test pit data.

Chairman White says that we have it from 1990.

Mr. Ledgett says that the subsurface requirements have substantially changed. Is this still valid?

Planner Noel suspects that the bed and dimensions will vary, that they will use the information from the test pit, but whatever they go with will depend on the available area that they have to meet the setback.

Chairman White says that the question might be whether the state requirements are so stringent that we need new data as part of this.

Planner Noel doubts it, but if the Board would be more comfortable with it, it could be done.

Mr. Ledgett says that we know the soils in this area are marginal. It is a sensitive area.

Chairman White asks if the applicant would be comfortable with a condition that new data be obtained as a basis for this septic system.

The applicant asks if he could correlate that data with the septic requirements.

Ms. Kline says that the applicant has a plan that shows where the test pits were dug.

The applicant says that they have that and that it was performed by someone licensed to do that.

Mr. Ledgett says that what he is thinking of is that he was told that we have to have current soil information. Old test pit data would not suffice. That's the question sitting in the background. The code clearly says that we are supposed to have test pit information. He assumes that is the current information. If it gets old enough, it won't be applicable. The question is one of completeness - do we have in front of us what we need?

Chairman White says that we may be able to fashion a condition that the applicant get the data updated for us.

Planner Noel would suggest to the Board that for a septic system design, if the Board were to approve this request, the party that bought the property would not be issued a building permit

until that person provided to the CEO a septic system design that would support the proposed dwelling.

Mr. Mangiafico says that the original developer is out of the picture now.

Chairman White says the only question is whether new test pits need to be dug.

Ms. Gagner says that it may be required for the septic design anyway.

Ms. Kline says the engineer can use the older information.

Planner Noel says that without the same site evaluator, the evaluator probably won't take this and will require new tests to be done.

Chairman White says that if you design the system and it fails, someone will come knocking on your door.

Mr. Ledgett thinks that we need to worry about this. The Comprehensive Plan says that we need to pay attention to stuff flowing into Spruce Creek. We are obligated to make sure this is a suitable disposal system. He would prefer to have the Planner's judgment in this. What we do know for sure is that failed septic systems are a major part of the loading that is flowing into the Spruce Creek watershed. He would like a condition that new data be obtained.

Chairman White asks if there are any other issues. Hearing none, does anyone want to put a motion on the floor?

Mr. Mangiafico asks who will be reviewing the new test pit data. It will be the applicant's responsibility prior to the plan being approved to demonstrate that it meets the standards.

Chairman White says that we can specify that this is not good enough.

Mr. Ledgett and Ms. Kline say we don't know that.

Mr. Ledgett says that we need to approve the lot subject to meeting the requirements, otherwise we would be approving a nonbuildable lot.

Mr. Mangiafico moves that the application of Harout Dersimonian, 178 Haley Road, for a modification to an approved plan for Hutchins Cove Development, plan drawn by and dated 8/4/05, with a revision date of 10/31/05 including the original revised subdivision plan dated 8/6/1999 and signed by the Planning Board Chair on 8/12/99, creating a subdivision of lot 39-3-1 to become 39-3-1 and 39-3-2 be found compliant with 16.36.070.C and be approved with the following condition: that the applicant supply to Planner Noel new test pit data or data that would confirm that the original test pit data meets subdivision design standards.

Mr. Ledgett seconds.

Chairman White would like to add as an amendment to that motion a condition that the number of dwelling units on lot 1 be noted as a maximum of 2, and that the Chairman is authorizes to sign for the Board.

Mr. Mangiafico amends the motion.

Mr. Ledgett seconds.

All in favor of the amendment.

All in favor of the main motion.

A break is taken at 6:50 p.m.

4. **PUBLIC HEARING: SEBAGO TECHNICS FOR THE TOWN OF KITTELY. THE TOWN IS REQUESTING REVIEW/APPROVAL FOR A MUNICIPAL RECREATION CENTER TO BE LOCATED AT 2 COLE STREET, MAP 15, LOT 14, ZONED VILLAGE RESIDENCE.**

The Planning Board meeting resumes at 6:56 p.m.
Chairman White introduces the application.
Megan Kline will step down for this item at her own decision.

A. Public Hearing

Town Manager Jon Carter stands before us tonight as the Kittery Town Manager presenting a municipal project for approval. This project has been approved by the citizens of the Town of Kittery. His draft notes are before the Board members and are in draft format. As the new Town Manager reviewing the project and how it came about, it was interesting to note that in the minutes of May 2001, the Board accepted the recommendation for the recreational facility to be placed at this site. At that time, Patrick Bedard, as Chairman of the Building Committee, indicated that the physical therapy unit would be included. In May 2001, there were many different designs before the public. In 2004, the project was approved. They have gotten to the point of a public hearing before the Planning Board. The Community Center Building Committee is an appointed committee that has been in place since May 2001. The issue of lost fields has been compensated through the purchase of alternative land with Town funds. There is also land in the Village area - 20 acres on the shores of Spruce Creek that would offset any loss of green space. The team that was put together has professionally designed the facility with an eye to the ordinances in place. This is the first project to be reviewed through the peer review program and it has been reviewed by the DEP and issued a state stormwater permit. As for the recent issue regarding the deed, he and the Town Attorney are engaged in clarifying the ability to have York Hospital as a tenant in the building. Tonight, this is an opportunity for the community to hear about the design. This is not about whether the people want it at the site. The issue is whether it is a project that meets the ordinances at the site selected. He knows the Planning Board will review and uphold the ordinances of the community. He thanks the Board for this. Chairman White asks if the notes were something we got tonight.

Planner Noel says yes.

Town Manager Carter says they are in rough format. He did attach the Council meeting minutes of May 2001 and the things he spoke about in his address.

Bob Guay, Chairman of the Building Committee, introduces himself. Several people from the design team will follow him. This is their third meeting in front of the Planning Board. He is confident that they have met the LUDC and will get approval tonight. They have made sure over the years that they got public input. They had a sketch plan presentation. The Committee has met about 60 times since the first vote in 2001. They invited abutters to attend the meetings to get their input and did get their input. There were over 60,000 flyers mailed. There was information presented about it in the community newspaper. There were two voter surveys and a consultant to interpret what the surveys meant. He is pretty confident that they got input from the community and that this is a project that the whole town will be proud of. He asks if there are any questions.

Chairman White says that the Committee has worked long and hard.

Michael Tack wants to start with a synopsis of what the building is. It will be the recreational center and house recreational functions. It is a one-story building and it was done that way on purpose. The building contains a large, regulation basketball court. Is a community facility to be

used by all ages. It is designed to separate the more active from the more passive functions. It has all purpose rooms, two large rooms that can be conjoined into one, restrooms across hall for them, an aerobics room where that can be held, an exercise room, a weight room, and locker rooms where teams playing can have changing rooms and facilities. Also part of this is the rec. department offices. Someone needs to schedule all the activities that the Town will have there. Also in front is the lobby and waiting space. They want it to be pedestrian oriented so people can walk here. The intent is it's in the community and for all ages of residents. He will turn the floor over to Will Conway to go over land use and site planning.

Will Conway is a landscape architect with Sebago Technics. He has presented to the Board before but would like to start with a synopsis of the lay out. He shows where the existing rec. center is located and where the new rec. center would be located. He says the Board may recall from the site walk that there is a considerable grade change from Cole Street to the lower portions of the site. They are very conscious about lowering the finished floor to minimize the height of the building. Then they were working with a traffic consultant to determine the appropriate main entrance. He shows the main entrance and primary parking. Also in recognition of trying to minimize traffic, a second means of egress behind the existing rec. center will be used that accesses into a second parking area. He says the Board probably recalls from the site walk that the natural low area of the property is located in green space. There is an existing wetland and he will address how they reacted to that. The other thing that they were very careful about doing in terms of this project was designing the site lighting. They retained a lighting consultant. They submitted photometrics that show that no there will be no light exceeding the property lines. He would like to address some comments that he has heard from members of the public during the ZBA process. The first one is on the subject of lot coverage. In this zone, they are allowed to cover 40% and are proposing 13% coverage.

Chairman White asks if that includes the existing rec. center.

Mr. Conway says it does. He thinks that others are concerned regarding expansion in the future. The Committee has no plans for expansion. It is his opinion that it would be very difficult to expand this site. The ability for this site to expand is marginal. The other thing he would like to address is the retention of existing specimen trees on the property. The photographs demonstrate what he is talking about from various parts of site. On Cole Street, the existing trees would be maintained, as would those along Woodlawn. None of the trees in those areas are proposed to be removed. All of those trees are located on the high ground and adjacent streets. They set the building back and lowered it to allow the trees to remain. There is a gap along Cole Street. The Board may recall from the site walk a specimen pine and maples, but also a gap. They are proposing plantings to fill in the gap. The last issue he would like to address is the subject of the wetland impact. As he introduced himself, he is a landscape architect, trained for that, and he has a professional responsibility to acknowledge the existing quality of a site when he does a design. When he first came to the site, it was obvious to him that it was a low lying area and historically, when the baseball field was built, it was probably a wetland that was filled to create the baseball field. He knows that there is an elaborate underdrain system under that field. He knows that the existing wetland at one point was larger than it is today. If you look at the photos, he is trying to demonstrate that this is not a high value, functional wetland that one might see in a coastal setting. He is not diminishing that it is an important resource. However, we are talking about a wetland that has been disturbed in the past, without a lot of shade to foster a wildlife habitat.

This is not, in his opinion, a high value, functional wetland. The Board can refer to the drawings that were submitted. There is basically a rectangle with a small wedge that goes up into the parking lot that they are proposing to fill. The larger part of the wetland they are not proposing to fill. Always balance the resource with the proposal. They wanted to break up the parking on this site. They also worked very closely with Mr. Rossiter to design the parking area for ease of snow removal. He thinks it is a reasonable proposal. In addition to not disturbing the largest part of the wetland, they are proposing to increase the size of the wetland. It is 3,920 sf currently. They are proposing to fill 750 sf, less than 1/4 of that area, and create 8,800 sf of wetland. If you take the difference between what is there and what they are proposing, they are essentially tripling the area of wetland from what it is today. The other thing he would like to address is in the zoning regulations. He would like to read from it as to the purpose and intent. It says that wetlands are a fragile natural resource which in their natural state serve as pollution filtration systems, control of flood waters, erosion control, groundwater resource, open space, and recreation. He thinks the intent of the proposal meets the spirit of that ordinance. He would like to ask Rob Gillespie, who has a lot of the history of the site, to come up and speak.

Rob Gillespie is the principal technical engineer with Gillespie and Associates. He has a hearing aid and this does not interact well with the speaker, so he will not be speaking directly into the microphone. He did three investigations of the site, the most recent in 2005. They were all done to identify potential problems, locate the building on the site, and provide support. Beginning at Cole Street, and moving in general southerly direction, there is shallow bedrock transitioning into soil. From about half-way through the building, there is a transition from shallow bedrock to silty clay that continues across the site. It gets deeper from nothing to about 30'-35' deep. There is a ballfield in that area. There is 2'-5' of a sand/silt mixture to make the ballfield. The tennis courts are on natural ground. The wetland is used for skating in the winter. The ground water is nonexistent to 2'. The primary reason he is here is because there were questions raised about the groundwater hydrology. This is an isolated feature. There is a very irregular bedrock feature. If you back up several hundreds of millions of years, we used to have three mountain ranges, one at the coast, one at the ski areas, and the White Mountains. When the one land mass began to break up, what became South America moved to the south. One piece of the original land mass hammered this area. That is why the bedrock here stands at a very steep angle. When the glaciers came, they eroded part of it and made glacial till out of part of it. You can find glacial marine silty clays up to elevation 280 in ME. When the ice started to recede, there was a lot of melt water close to here. In Wells, there is a huge sand deposit that extends up into NH. The grain size is all the same. As the ice sheet melts, the water slows, the land rebounds and there are finer deposits in the water. Here they had a cachement with an outlet in the south end. It is isolated. The ground water probably flows to the south. It does not go to Spruce Creek. He shows south on the map. There is not a lot of ground water on the site. The soils are not amenable to it. What nature did is it left a shallow depression in the ground. When he bored in the area, he found 2-5 feet of fill. That was added to create the ballfields and the flat surface there now. There is no written record of when this was done. There is a drain for right field. If you look at the topography, there is not a lot there and that is one of the deeper fill areas. He thinks that this was done to enhance the removal of run off. If the field does not run well, then you have to underdrain it. The water percolates down in a french drain, and is then taken to a discharge point. This is a very common practice. He did not locate a discharge point. No one

seems to know where it is. It is a relatively isolated system. There is not a lot of water other than what comes out of the sky. He would not classify it as any more than a very limited aquifer. The wet is primarily captured surface water. There was one comment in 2001 or 2002 about concerns about wet basements off site. When he did an evaluation of that, it turns out that the houses along the north side of Cole Street were up in elevation above groundwater. Their conclusion was that the surface run off made its way into them. There is not a lot of groundwater. He is pleased to hear that there will be 11,000 sf of wetlands when the project is finished. This will provide more control for stormwater and more control for recharge.

Mr. Muir asks about the basements.

Mr. Gillespie says they were crawl spaces, not basements.

Mr. Muir asks about the mucky peat.

Mr. Gillespie says that the organic material, which is not deep, degraded to mucky peat, organic clay, and organic silt. He did find sand and gravel mixed with it and thought that was fill mixed in with it. It is generally 4'-5' below grade.

Mr. Ledgett has some questions on the whole wetland situation. When do we want to talk about that?

Chairman White says that we can do that during the Board deliberations.

Mr. Ledgett would like it before that.

Chairman White says that we can have that discussion at the end of the presentation.

Peter Hendrick introduces himself as the Traffic Engineer on the project. He thinks that all on the Board have the traffic study. He says we went over it briefly a few weeks ago here. He would like to go over traffic generally and safety based on the accident history. He will go through it briefly. They have estimated traffic based on the morning and afternoon peak periods. It is based on the information that they have. They are forecasting 69 cars in and out during the morning peak and 91 in and out during the evening peak hour. What that breaks down to is 38 coming in and 31 going out. They are looking at a little more than one car every two minutes. In the afternoon, they are looking at one every two minutes in and one every minute out. On Woodlawn, they are suggesting at the driveway that the chain link fence be relocated to provide clear sight distance and, looking from the right, they are suggesting that the vegetation that overhangs there be trimmed back. As far as an operational analysis, there are very low traffic volumes on neighborhood streets, so there is no problem there. It is difficult to get to Shapleigh Road, but there is nothing to be done about that. People will have some delay getting in and out. He looked at the safety history. At the intersection with Shapleigh for Woodlawn and Manson, the DOT does consider those to be high crash areas. He did not find any particular patterns of crashes that could be addressed. He suggests that the Town continue to monitor that area. At the last meeting, the area that they focused on included Shapleigh, Manson and Woodlawn. The yellow dots are the intersections and the area between them. At the last meeting, it was suggested that folks from Kittery Point would use Wyman and they were asked to look at Wyman and Whipple as well. There has been only one crash in that area in the last three years. Similar to the driveway, he suggested that cars coming from Wyman and looking left would have their view obstructed some by vegetation. This should be kept trimmed back by Public Works. Sight distance improvement measures were all that he saw needed to be done. At this point, he could address questions that the Board could have.

Chairman White asks if the Board would like to ask any immediate questions or whether we

should wait for public comment.

Mr. Ledgett says to wait for public comment.

Chairman White asks if there is any more to the presentation.

Mr. Guay says that's it.

Chairman White asks if Mr. Ledgett wants to ask Mr. Gillespie his questions.

Mr. Ledgett can wait. He has written them down.

Chairman White asks for a show of hands as to how many are here to make a presentation. There are 11. He won't give time limits but will ask everybody to be considerate of others and of the Board. If you are simply repeating what someone else has said, you can reference that instead. We will take that seriously into consideration. He would concur with the first comments made tonight by Town Manager Carter. This hearing is about whether this complies with the ordinance. It is not about the political process. He would like to confine the comments about this to ordinance issues and project issues.

Robert Jacob of Woodlawn Avenue would like to address the traffic business. Nowhere in the presentation did he hear anything at all about the traffic impact on the residents. It was brought to our attention at the last meeting the objections by Chief Strong in 1988 to someone that wanted to build six houses in this area. The increase in traffic would have impacted Woodlawn Avenue, his property, and the intersection at Shapleigh Road. Someone mentioned that in 1988, there were 9,000 Shipyard workers, and now there are only 4,000. Not all of those workers lived in Admiralty Village. As for any Shipyard workers that left, their homes were immediately taken up by new tenants or new owners. Admiralty Village is 100% occupied. People use the road daily going to work, errands, etc. This was not brought up by the survey. The streets that feed the Village have heavy traffic because of the number of families that live in that area. Traffic to the back gate is now staggered through the day due to shift changes that were not in effect in 1988. If it was wrong to have an objection, then it was wrong for the Chief to object in 1988. It has to be more wrong to have more vehicles clogging up the roads, coming in through the Village. To get into this complex just aggravates the situation. Many, many children use those streets for play. This is not right. He does not think the traffic engineers look at the lives of the people that live there. They look at the beautiful project and to Hell with the people that live there. It's a one-floor building. What are the huge peaks? One floor is one floor. It looks like they are making space to add space for expansion. It is not fair to us that live there.

Sandy McDonough, homeowner on Manson Avenue, thanks the Board very much for the opportunity to speak tonight. If the rec. center needs to expand, this is not the appropriate place. This will take away the only green space in the Village given to the people. The house lots are so small. The deed issue has come to light. They must find a more appropriate site instead of ruining the green space. It is a really bad traffic area and will get worse. She says thank you for your attention on this matter.

Bill Pagum has a letter here that he wrote up and he has a neighbor's letter he would like to submit. She lives across the street.

Chairman White asks him to read her letter into the record.

Bill Pagum says that Natalie LeClair, 106 Manson Avenue, writes that she has lived here for 10 years. If the new building comes here, it will destroy what they have left. They already have to put up with Coastal Woods. People are driving up and down Cromwell too fast. She has already lost three cats with the traffic. Her property straddles Cromwell and Manson. It's already

difficult to get onto Shapleigh with the Shipyard traffic. She does not want the area lit up 24 hours per day. It is starting to look like the Town wants to bring all the problems of the city to this town. She chose Kittery because it is like a big family and not commercialized.

Mr. Pagum also has a one-page letter. He did want to talk about the wetland issue. The history that he has heard from neighbors that have lived there 40-60 years is that this has been filled in several times. It was originally a marsh. He shows the areas that are hillsides and the stream that comes down the hillside and drains into the area. Water comes down and tries to get to that area. His back yard floods because of drainage problems on Cromwell. Neighbors have wet basements. He moved to the area in 1987. Behind his house, there was a marsh. The Town filled the marsh and put in some drains and a rink and some other stuff. Before that, it was a safety issue - tree trunks and standing water. He does not know if it is a wetland. They had a large flood there in 1990. They put in drains there. The brown house next to his had a major flooding problem. The drainage from the hillside goes into drains. He shows where the drains are. The drains are always going. You can hear the water inside. The whole area was a wetland marsh to take run off from two hillsides. The allowable wetland will be small and this area will be flooded which will impact his neighbor's home. He has a picnic table in his back yard and it's all rotted because of the water. He has to have it on cement blocks. The water table is very high. He reads his letter. As an abutter, he has a number of concerns about the rec. center. He does not want to say he does not want it. It is large and he does not like the location chosen for it. As for the wetland that is shown, he thinks there is a larger area of wetland. Below the parking lot, the whole area looks the same to him. The marsh was right behind his house. Now they are saying it is not a wetland. It is a haven for birds and animals that will now be paved. He is concerned about increased traffic and noise. This will decrease the property value for his house. The rec. center is peaked at 35' from ground level. The back yards flood from the road. The road is in rough shape. It has been paved, but it is rutted. The issues that he has with the proposal are the proposed retaining wall, the disturbed wetland, the taxes - it will be a heavy tax burden, as far as he knows, this is not in the Comprehensive Plan, commercialization, traffic safety, the lack of sidewalks, and this is a very residential area that will be impacted by this.

Susan Emery of 5 Mitchell School Lane, Kittery Point, introduces herself. What she handed out is a page from the rec. center brochure. She has concerns about the proposal given the deed. She does not think this should be approved until there is a decision on the deed language. If it does move forward, this is what she would like to see: the orientation changed. In 2001, the Town Manager at that time said that the Town Council agreed to place the rec. center on the current site. She was on the Council and envisioned the current site used differently. If this goes forward, she would like to see the orientation changed, the current building removed, and the new building put on the current site to preserve a lot more of the green space and the open field. The second aspect she would like changed is the parking. She thinks the amount of parking really covers an awful lot of the green space and she would like at least a third of it taken away. She is aware that the Chairman of the Building Committee made a proposal like that and she would like the Board to analyze the parking situation and minimize increasing the parking. We were told that the physical therapy section would have 20-30 patients/day and if you look at a whole day, they would only need about four spaces at a time for patients and some for staff. At a hearing she attended, one individual said that they don't have enough parking for large events and that people will have to park along the road. She thinks that they don't pave for the largest

event. They pave for the more typical situation. The next issue she would like to address would be scale. She is very concerned about the scale and its impact on this neighborhood. She would ask that the Planning Board look at removing much of the administrative wing. She does not understand why the rec. dept. needs such a large administrative wing. She would think they would be out working with people in programs and that the administrative portion could be minimized. With respect to the design, she admits that she did not make it to those meetings and did not provide any input. She was not going to say anything about the design until she found out that it is subject to the design standards and the purpose of the standards is that development not impact the community and that it support the historic and marine character of the Town. They made that one of the goals and mission of the Mitchell School Committee. She does not understand, now that she found out that they are subject to the design standards, how they could see this as having marine or historic character. She would ask that this be changed. The fifth request would be that this project should be totally buffered from the neighborhood. The people are used to looking at a beautiful green space. She would like this totally buffered so that they just don't see it at all so the people in the neighborhood could continue to look at green. She was glad to hear that lighting is being carefully considered. She thinks Traip Academy is a good example with respect to lighting. That's one thing that she thinks did not come out so great at Mitchell School. It needs to be carefully considered. The sixth issue to consider would be noise. She is concerned about the hours of operation. She understands that physical therapy will start at 6:00 am. She thinks 8:00 am is more reasonable. She is very concerned about the number of children in the neighborhood and the number of local roads to be used, particularly by those who are not familiar with the area. She feels speed bumps to keep speed down would be critical. She does believe that these requests and suggestions are consistent with the Comprehensive Plan. She won't cite to the relevant sections, as she has before. They relate to low intensity use, minimum run off to Spruce Creek (as she is pretty sure this is in the watershed to Spruce Creek). The more green space retained, the less of a change there will be in run off. She has one final comment to make. She would ask that the Board not go forward with the idea that Eagle Point could somehow be substituted for this. Town Manager Carter referred to this. It is along the shoreline of Spruce Creek and that is one of the areas in Town of regional wildlife significance, so she would be very concerned about developing that for ballfields. Picnic tables could be OK. As for swapping a place to play ball, she would not assume that this should be a go.

Glenn Shwaery would like the Board to ask about the rationale behind the expansion of the wetlands. He would rather see it handled by an underground drainage system to carry it away. If they are going to take 7,000 sf of usable grass space and create a wetland with it, if this is because of a drainage issue, he would rather see it handled some other way. He would rather lose wetland and maintain usable grassy area. The rationale for the expansion of the wetlands would be something he would like to know. He is sure it can be handled one or two ways.

Earldean Wells, the Kittery Conservation Commission Chairperson, says that she read recently that the Town Council, recognizing the value of open space, organized an Open Space Committee. The irony is not lost on the Kittery Conservation Commission that we are now reviewing a proposal to cover a significant open space. She is concerned that the proposed development will exceed the lot coverage. The request was made to allow for expansion of this building. Earlier pamphlets sent by the Building Committee featured a swimming pool. She feels the proposal is likely phase one, so she wants to know how further phases would be

handled. The wetland is intended to be partially filled to accommodate parking. To obtain a wetlands permit, the applicant must prove that no other way is available. Kittery residents should not bear the brunt of this. The proposal says that the wetland will be used for drainage. She thinks this is a violation - undischarged water shall not be discharged untreated into a wetland. She requests that special attention be paid to the landscaping to ensure that the application complies with landscaping regulations. She requests that the Planning Board review all of the parking lots to ensure that there is adequate vegetative screening of headlights. She feels the Board should review the concerns carefully. This is a Town project and the Town ordinances should be upheld. Lot coverage should be reduced to observe open space. Since the Planning Board has heard that future expansion is likely, she wants to know how that will occur without exceeding lot coverage or limiting open space. This is the first that the Kittery Conservation Commission has heard that Eagle Point might be used. She would like to speak to that at a later point.

Nori Mitsui, 15 Pepperill Road, wants to say something and does not want to have people take it as an insult. He would urge the Board to consider this strictly according to the rules and regulations that it is supposed to follow. One reason that he says this is that, if for some reason this site is disapproved, the Committee will have to look for another site. When they do that, the Board needs to establish a clear precedent as to why this site is being rejected based on the rules and regulations. That's his concern.

Lisa Comeau lives in the Village at 33 Halstead Street. She thanks all of the Board for being here tonight and thanks people for coming out tonight. She wants to get out of the way the item she handed out this evening. It was a request for a corrective hearing and an appeal to the ZBA for their decision. This does concern this application tonight. They are related. It specifically talks about 16 points in the Land Use and Development Code and how they were not deliberated over publicly. She is asking the Board to please read it and make themselves aware that this is an issue that is coming. She has prepared a display for the Planning Board. She did invite the Board two times to a walk about and she understands because of the restrictions that are placed as far as ex parte communications that the Board members could not come. She decided to do this. She put this together for the ZBA and Planning Board. She will bring the Village to the Board. She apologizes to the audience if they can't see it. Basically, she is bringing valuable information to the Board. She has lived in the Village 11 years and has observed how life is and is accustomed to it and appreciates it and marvels at how fortunate she is. The traffic study opened this all up for her. She wanted to bring it to the Board. She took pictures. The whole problem of the development is its size and scale as it relates to the existing neighborhood. The existing center is in size and scale proportionate to the neighborhood. One of the number one reasons she bought her house in the Village is the rec. center. She feels based upon what she will say tonight that the Town needs to find another location that is more suitable for this building that will allow for future expansion, not impact a residential neighborhood, and will be more accessible off a main route. She has taken pictures of very green space and wetlands. It is beautiful and tranquil. Someone was smart enough to leave these for us to enjoy. People have talked about the field not being used, and about it being a poop park for dogs. She shows pictures of kids practicing, with the rec. center behind them. Another family, a father and two children on a Saturday evening, lay down on the lawn with their dog. She kept jumping out of her van to take pictures as more families came. A neighbor comes there with her two pugs. Two

boys came over to see her pugs. They came from across the field to see her pugs. Then she sits down and the kids take off, heading for Dan's Path. Now she wants to bring the wetlands to the Board. She had to climb around and get scratched up. The wetland water scientist, Mr. Gillespie, she wanted to ask him if he had a chance to go through a fence and see the stream that feeds the entire field and disturbed wetland. It comes from two contiguous wetlands just out of sight. She crawled in and followed it to the first contiguous wetland. There is lots of brush, ducks, heron, peepers, all different birds. It is almost a sanctuary. And then she hit Dan's Path. You come out to the fence, the disturbed wetland, stream, the first wetland, Dan's Path, cross over that, and water coming from the wetland spits out of the other side. There is a huge wetland where lots of wildlife live. There is so much flora and fauna there that it almost obliterates Mr. Pagum's house. She shows where it is all overgrown flora and fauna. There is a sign there that says skate at your own risk. Poor Bill Pagum. His basement was flooding every time they flooded this for people to skate. She has shown the wetlands. Throughout all of the proceedings tonight and over the last couple months, she was amazed how little people want to listen to lifelong residents. It is very hard to walk in the disturbed wetland because the stream is feeding it and the wetland is trying to reclaim itself. Nature will take back what you have taken from it. What we have here is water, water, water.

Chairman White asks how she says the water flows.

Ms. Comeau says it flows into the field. In the first wetland you encounter, it appears the water that you encounter is going into the field. Maybe what is happening is that it is all going into the large wetland. That is what she is proposing from standing and watching what it was doing. She has spent a lot of time observing this and wanted to ask Mr. Gillespie if he saw the wetlands out of sight because these wetlands all work together. They have a big water problem in the Village. A lot of people talk about an underground spring that runs underneath it. They have put basements in the houses and they deal with water all year long based on the storm events. She is far away from it and she deals with water in her house. She thinks the whole Village area was once a swampy area fed by a spring. She is concerned that if you take all of these things working together....

Chairman White wants to clarify whether the two other wetlands are offsite.

Ms. Comeau says they are. Her point is they are all working together.

Mr. Ledgett says that if they are contiguous....

Ms. Comeau says that if you go to the field, the swallows come to the field every year and tease the kids and the dogs. They have wildlife that comes here to the disturbed wetland. It is not far from areas that look like the disturbed wetland. What she did to the plan was she wanted to give an idea of the scale, so she used a lot of black to show the existing center and the proposed center. If she blocks out the existing center now, the area shown is green field that will be used for the rec. center. Half of the field will be gone because of the building and parking lot. She shows Donna Frost's house, Audrey Wilkinson's house. How will they have a ball game there? They're low and middle income in the Village. They don't go away for vacation. They fly kites, do model rockets, model airplanes. A little over half of the field would be gone. That is a huge amount of green space taken away from the community that uses it. They don't have the money to go away. The traffic study came out one month after the last vote in June. She spent a lot of time on the phone repeatedly and she wants to thank Peter for bearing with her. He had told her that it amounted to a car every 90 seconds. She asks if that still stands.

Peter says the numbers that he gave are the accurate numbers. He talked rough numbers with her on the phone.

Ms. Comeau does not dispute the education of the presenters, but the people that live in the Village are able to testify as to the traffic that they deal with on a daily basis. Yes, there are quiet moments, but you have to get creative to get in and out of the neighborhood. You have to use cut throughs to get in and out of the neighborhood. The feed roads are already overwhelmed during peak hours. Questions have been asked. What is going to happen when you add the additional traffic to this area? There will be expanded services, offerings, and more people. How will they live with that and deal with that? She provided information on three additional accidents that occurred over and above those cited in the traffic study. She wants to talk about the new intersections they are proposing. What they are proposing, right now there is a three-way where some of the accidents occur. Some of the accidents were cited in the traffic study as well. Ask anyone who lives in the Village what it's like at the three-way during peak hours. It's dangerous. There was a child hit by a car near there. There is a blind spot and he got hit. When it is turned into a four-way, what's going to happen? Then they have another proposed entrance. Right now, they have children that come out of the houses on Manson Avenue and wait for the bus there. The Manson Avenue cut through is a hill and people come flying through there all the time. When you take a driveway and make it a throughway, people will try to cut through and what will it be like when it becomes a three-way? Over here is where the trucks park to fix the electricity in the Village when it goes out. That will be a disaster. With the children waiting there for the bus, getting off the bus, 3:00 is a peak hour for this. Flyers. She looked at all the flyers she received. They were awash with all the information that one needed to make an informed vote.

Chairman White interrupts.

Ms. Comeau says that's ok. She has plenty still to show the Board. She is showing a very old copy of an original map done in 1948 after the formation of Admiralty Village. It was an addendum to the original deed that has language that states that this is supposed to remain as open space. She shows where the existing center is on the map. They had the covenant language as to the use and intent of the Village. Why would they add this as an addendum to this map? It's pretty clear what that is. You see how crowded this area is. You can see the density of the neighborhood. You can see the small sizes of the lots. At the end, you see an anchor, Emery Field. They attached it because they wanted to give us a picture of what their intent was in 2005 when they designed this subdivision. We will hear tonight how much work they did. It is very sad that they didn't research the deed or ignored the language. In terms of zoning, she sows the Land Use and Development Code. This is the Planning Board Bible that helps to maintain the integrity of the Town. Since this is what to look at, she decided to look at it and study it, too. Page 283, with regard to wetlands, is pretty clear. The drawing is misleading because it shows green space where the retention basin will be. You can plan on taking the water that the entire field once handled and put it in the retention basin. How can you take all the surface water runoff when you turn this into impervious surface, all that water that the field dealt with, and someone's kids went swimming in it two summers ago when it flooded? How do you take all that water and add to it ground water and underground water that we know about because it goes into basements and get it to go into the retention basin? And then what do you do with it? She was told it would go into Spruce Creek. People are trying to maintain its integrity. She can't

take clams there this year because the E-coli counts are too high. Allowing that water to go into Spruce Creek is wrong. She did mention zoning, page 283, 16.28.450 review criteria for wetlands application. Preference is given to activities that must have a wetland location in order to function. This does not need a wetland location. The project is supposed to have as little impact as possible on a wetland area. They do not show on the picture the retention basin. This is the picture that was distributed to the public. This is disturbed wetland that is trying to reclaim itself. Put the building someplace else where it will be more appropriate. She reads further from the ordinance. This advises against what they are proposing. It is the responsibility and burden of the applicant to show that it meets the requirements of the ordinance and the Planning Board shall not approve the application unless the applicant shows that there is no other alternative other than to alter the wetland. To determine that, they must consider the following: reduce the size, scale, configuration, and/or density of the project; develop alternative wetland designs - they can do that; will it reasonably increase the flow of surface waters through the wetland? They are talking about digging a retention basin.

Chairman White thinks that she has made her point and it is a point that the Planning Board will pay attention to.

Ms. Comeau has a concern about a child drowning in the pond where a bunch of kids live. If she continues to use the zoning and turns to p. 328 regarding groundwater impact 16.32.520, it says that in order to protect the groundwater resources of the Board....

Chairman White says that the Board looked at this in the preliminary hearing. It applies if there are wells. We determined that we will not be looking at that here. He thinks the sense of the Board was that this portion of the ordinance does not apply because it has to do with drinking water quality and this is on Town water.

Ms. Comeau proposes that since we are talking so much about wetlands, since this is such a big issue, and since it is so near a protected area, this is a very sensitive area. If you drive through the Village, drains are spray painted "careful what you put in because it drains into the creek". The book says that the Board should consider drainage.

Chairman White says she has made that point.

Ms. Comeau says parking is on the next page. She highlighted a couple that she thought were of significant importance.

Chairman White asks if there is anyone else that would like to speak besides Ms. Comeau. He would like bullet points from Ms. Comeau at this point.

Ms. Comeau will address traffic, size, scale, open green space, wildlife, new intersections, and gates and Eagle's Point.

Chairman White asks for a couple more points from Ms. Comeau and then we will hear from others. He thinks what she is telling us to do is to read the ordinance and do our job.

Ms. Comeau says another bullet point was the general capacity of the streets serving the Village and what kind of action they see. She has been talking about the wetlands and showing the scale of the project. She did mention that she considers the pond to be a drowning risk. She has an interesting question. Why would any developer propose to build on a site and max out the site? She thinks that shows the site is inappropriate. They need a larger site that will allow them to expand. They started with a pool and an elevated track. Why not look for a site that will allow them to expand? Why degrade the character and quality of life in a neighborhood? Why not seek the right site? It was said that this is not a high value wetland. Anyone that lives there will

tell you that we value it.

Chairman White says that it is actually an engineering term of art.

Mr. Ledgett says that it has no definition. He'll get to that. It is an argument that has no bearing on our deliberations.

Ms. Comeau says that the intersection floods and you have to drive through water. In the winter, it freezes. She does not even want to think about what it will be like. The Town purchased a field that is supposed to replace green space. This we can walk to. Gates. The last time she looked through the file, she found spec. pictures of huge gates. She was wondering if this would be a gated facility or if it was to go around the detention pond.

Chairman White says we can certainly ask.

Ms. Comeau shows the elevations of the entire site and all the different ways it changes its slope. She tells the Board to see what is missing from the picture. See the detention pond. Basically, what she is saying is that the Planning Board has the power and the wisdom to ask the applicant to find another site.

Chairman White says that we will see if it complies with the ordinance.

Lisa Muccio at 4 Central Avenue is not in the Village. She lives in the Foreside. We are hearing a lot about the Village. The Village is not alone in its water problems. She has them at her place. Kids need space to play all four seasons. They don't have sidewalks either. You want to know why this location was chosen? It was chosen for the people. 36% of Kittery's kids are overweight. The adults in ME were rated healthy except we're fat. We have a huge obesity problem. You can't get out four seasons. That was cited in the studies as one of the reasons. We have the highest gray population. Seniors that are active have a lower risk for dementia. She wants her son to be able to bike or walk to the rec. center. He goes to Traip. This facility is being placed here so that it will be near the people. As far as the watershed, she will leave that to the professionals. She thinks they have done a fabulous job. She would rather the Board took the opinion of the experts than people guessing. She is quoting Ms. Comeau who said, "The kids are older now and they don't use the program." That's the problem. Kids get older and don't go there. Please make this decision on the ordinance and not on the politics.

Mr. McCloud would just like to address the Board on some points. One day he went on the Town website and in the document section the design standards, the handbook is posted there. He read practically the whole thing. He has seen the drawings. He has not seen anything that remotely looks like anything that is in that neighborhood. It does not look like it belongs there. It is more Midwest in his opinion. He also feels there is a problem with what the people approved by vote on June 14, 2005, and it says to enter into a land lease with York Hospital and it says by way of explanation that York Hospital would be allowed to enter into a land lease following negotiations with the Town Council with respect to a 2,500 one story structure. To him, land lease is you lease the land....

Chairman White says that is not in front of us.

He says it is an added building.

Chairman White says that this is a political question and not what we are here for.

He says the other thing is that he does not like the idea the Emery Field can be replaced with the sewerage treatment plant, Eagle Point, that should be preserved just the way it is now. Moving anything down there will be a disaster.

Chairman White asks if anyone else has something.

Mr. Pagum has a question over the ambiguity. Does the run off go into Spruce Creek?

Chairman White says we will get into that in deliberations.

Another says that he was at a meeting and heard someone say that they talked to Mr. Rossiter and were told that the retention pond would be hooked to culverts and go to Spruce Creek. He thinks that the water will be going into Spruce Creek.

The public comment portion is closed.

A break is taken at 9:11 pm.

B. Board Deliberation

The Board reconvenes at 9:20 pm.

Chairman White says to look at the waivers first since the ordinance tells us to do that.

Planner Noel says that the only valid request for a waiver is the soil survey. The others do not pertain. He does have letters from Fire Chief O'Brien and Police Chief Strong. He reads from the letter from Chief Strong. He reads from the letter from Chief O'Brien. All of his concerns were adjudicated by the architect.

Mr. Muir has a point of order type question. Town Manager Carter in his presentation stated that the deed to this property is being discussed with the federal government with respect to language that restricts the property in some fashion. He said he expects that issue to be resolved in a couple weeks. At the public hearing, Attorney McEachern said that if the deed cannot be changed, that is an issue to be dealt with. He is not sure then that we have the final application before us. He is wondering if it might not be premature to do a final analysis tonight.

Mr. Ledgett has a point of order, too. He thinks that before we enter into final deliberations, we should have questioning of the applicant. And do we have a wetlands permit application as part of this?

Chairman White and Planner Noel confirm that we do have it in the book. That's why he was looking at the waivers. The only other waiver was a high intensity soil survey and he thought we discussed it in principal at the preliminary hearing.

Mr. Ledgett says that we have heard some very substantive issues at the public hearing. At the heart of them are issues that relate directly to the ordinance and then there are others that are preferences. One of the things that is important for us to do is to sort out the preferences from what is required by the ordinance. There were comments made relative to the Comprehensive Plan. 16.28.210 says that the proposal shall be in compliance with the Comprehensive Plan and so that is directly relevant to our decision making.

Chairman White says that we also understand that we cannot deny an application based solely on the Comprehensive Plan. Any approval or denial must be based solely on the ordinance. It is confusing.

Mr. Ledgett says that it depends on how specific the Comprehensive Plan is. He would like to ask some questions of the applicant based on the wetlands issues.

Chairman White says to deal with Mr. Muir's issue first, then the waiver, then this. The issue is whether the deed restricts the land for public purposes only. He remembers it that way and not as restricted to green space. So, the application before us includes space and parking to accommodate a use which is not before us. The question is whether we can proceed with this application or if that use were not allowed, would the plan change substantially requiring a new

review?

Town Manager Carter says that the application is for the size building that will be built. If the space cannot be used by York Hospital, then the rec. center will take that space.

Chairman White clarifies that no matter what happens, the size of the building will stay the same. Mr. Muir says this is in conflict with what was said before the ZBA. York Hospital was heard at the ZBA and the use was approved and the space they will occupy is 2,500 sf. We also were given a map that shows that area. He would be astonished if what they said is true.

Town Manager Carter says that is not up to the Planning Board to decide. The applicant is willing to build a space, whether it is completed or a shell. He understands that the Town has been approved for a certain size building and the Town is asking the Planning Board for approval. The funding has been approved if the Planning Board grants approval of the application.

Chairman White says that what we need to decide is whether can consider the application with the deed question currently unanswered.

Mr. Ledgett thinks we can and should consider the application, but we may not be able to approve it should the deed restrict development.

Mr. Mangiafico says that we may need more information to move forward.

Mr. Ledgett does not have a problem with going forward at this stage in the game.

Mr. Muir says the ordinance requires us to minimize the impact and if there is no clear use for that space, we would have to deny that 10%.

Mr. Ledgett thinks that we can sidestep that and just review the building as proposed.

Mr. Muir has serious doubts that this is the correct way to do it. Since there is a sense we should proceed, he does not see the sense in going to a vote on it.

Ms. Gagner says that if the deed restricts it to public use, we may be incorporating it into the whole building.

Mr. Muir says the choice is between what was discussed before York Hospital got involved, which was a 23,000 sf building, and what it is now with 25,600 sf.

Chairman White says the engineer had something to say.

Mr. Tack says that before the ZBA, they presented the building as a complete building. The 2,500 sf is a use within the building. They took into account that if you build out the building, that would be the parking requirements. The building before us is a complete building. That corner of the building is a shell space and if it were to be built out, the max has been accounted for.

Mr. Muir does not understand what he means when he says it would not be built out.

Mr. Tack says it is shell space. Somewhere down the road, it could be a fitness room and they could put drywall up. The electrical wiring, plumbing, etc. would be in. It would be a built out space and designed for maximum occupancy of that space.

Chairman White asks Mr. Ledgett to ask his questions.

Mr. Ledgett wants to know who will answer his questions regarding wetlands.

Mr. Conway steps up.

Mr. Ledgett wants to know if the wetland was determined to be one by a ME certified wetland scientist.

Mr. Conway says that it was done by the Town consultant that is a certified soil scientist.

Mr. Ledgett asks whether they are relying on the Town expert.

Mr. Conway says the applicant is the Town. He says it was done by Joseph Noel and done in accordance with the Army Corps for mapping.

Mr. Ledgett says there has been a lot said about the standard that we use to make these determinations in the code. There were terms used like "low value" wetland and "spirit of the ordinance." These terms are not defined or used in the ordinance. We only determine it's a wetland if a certified ME soil scientist says so. If it is a wetland, then what is the evaluation according to the code? Look at permitted activities 16.28.410. They are doing a couple things with the wetland. Covering it with a parking lot is not a permitted activity. Putting in a detention basin is not a permitted activity.

Mr. Conway is not sure he interprets it the same way.

Mr. Ledgett says that there are permitted activities and none of them come close to this. In the wetland permit, our standard for review is "shall not approve" unless it falls under criteria a-h. When he read the wetlands permit application, he did not see a compelling reason that we should approve the parking lot or the other. He did not see that addressed in the application. Did the applicant consider the requirements of 16.28.450 when making this design?

Mr. Conway says yes, they did and perhaps in the opening presentation, he was not clear about how they did that. He thinks that the applicant must avoid the wetland or minimize the impact if the applicant doesn't have a reasonable alternative. He thinks that they have minimized the impact. They did retain the predominant area of the wetland. They are not excavating from it. They are not changing its functional character.

Mr. Ledgett says that they are when they are putting a detention basin in.

Mr. Conway says that it operates that way anyway.

Mr. Ledgett says that the Board will deliberate that. It is not the engineer's opinion that matters. It is what the code says. Where is the compelling reason for not reducing the size of the project - the building and the parking lot - so that they do not have to encroach on the wetland?

Mr. Conway says that the Town of Kittery has a certain need to be met by this facility that drives the size of the building that has been designed. With respect to parking, they are proposing the minimum amount of parking to support the building.

Mr. Ledgett thinks it is very important the way he said it. He thinks Mr. Conway needs to think about it in relation to the language of the ordinance. He reads from the ordinance. The Board must consider: using another site, reducing the size or scope of the project, or developing alternative designs. The order of precedence is the wetland comes first, not the project comes first. If you read it that way, then he is surprised that Mr. Conway is proposing a project that encroaches on the wetland.

Mr. Conway says that the town was given a certain project scope and designed it according to the site selected.

Mr. Ledgett says that they fit the project on the land and they are hoping that someone will find a way to make that possible and they will make us squirm to do that.

Chairman White says that he sees this where we can look to reduce or look to use the wetland as a detention basin.

Mr. Ledgett says that we need to split that question. Are you allowed to do that? If so, does it work?

Mr. Conway says there are two parts to that. Basically, and others who live there have spoken to it, the wetland is located in a bulb and does not have a positive outlet. When it rains, this is a

naturally occurring low area, and the water drains to that area. Saying that they are not changing its predominant nature is an accurate statement. It outlets by an outlet pipe to Manson that drains to Spruce Creek. They are required to do stormwater treatment as a result. In terms of overflow, what they are doing to improve the flooding situation, they would be lowering the driveway by 18".

Mr. Ledgett understands that point, but he does not think that Mr. Conway has answered the question that Mr. Ledgett asked. He wants to know about the rationale for use of a wetland, and whether it has been altered in the past is not germane to the code. To take that existing condition and do something with it, you have to get a wetlands permit from the Planning Board. Before we can approve that, we have to make a determination that an alternative is not feasible (the code says practicable). The parking lot and the building do not have to be that big.

Mr. Conway says that the needs of the community drive the size of the building. The parking follows that. They have minimized the amount of parking. It is right at the minimum amount of parking for that building.

Mr. Ledgett says that under that logic, there would be no protection. The explicit protection provided would be without effect.

Chairman White says that he is sure we will get back to that point.

Mr. Ledgett wanted to make sure that they understood their standard for putting it forward. The applicant's position is that is the size they want to have for the Town use and that is the sole basis.

Chairman White says it flows both ways. This is the size building they were asked to design and put forward.

Mr. Ledgett says that it is a restraint on the size of the development when you have the wetland.

Chairman White says that this is one of the hardest parts of the ordinance to apply. It starts saying that you have very little discretion, but then it appears to broaden.

Mr. Ledgett says that you have to meet all of the criteria.

Chairman White says that then you get to the rest of them.

Mr. Evancic asks if you were to put the water on the other side, you would not have the wetland issue. He does not know if that is an alternative. There's nothing that says he couldn't put it somewhere else and get away from the wetland issue all together.

Mr. Conway says that the way the site is graded, the detention pond needs to be at the lowest location. He would say this, though, in terms of minimizing the impact on the site. If the Planning Board could reduce the parking requirement, he thinks that they could live with less if that would be a measure acceptable to the Board.

Chairman White thinks that we could certainly look at that. We can't waive relief with dimensional standards.

Mr. Mangiafico thinks that if it does not fit into pre-determined use, p. 331, he believes we have leeway. Somewhere in there they talk about it. Look at the top of page 331. He thinks it's in there.

Mr. Ledgett says that we need to go to the parking standards in the back. Is it parking space design on page 362?

Mr. Mangiafico thinks that we need to find it, but there is some leeway in there. We should find what the closest use is. He reads from the ordinance. In the cases not specifically covered, the Town Board can make the determination. This is the first full paragraph, second sentence.

Chairman White says that is potentially good news to reducing impact here.

Mr. Ledgett says it's not covered in any of the tables.

Chairman White is not sure what will happen at 10:00 pm. He would like to suspend deliberations to discuss points of order.

Mr. Ledgett asks Mr. Mangiafico to look at page 332. He asks if the applicant has designed to this.

Mr. Conway says yes.

Chairman White says that might get some wiggle room. We have a public hearing to attend on December 28. He was going to try to address the minutes question by suggesting that we meet a little early and do minutes then. We could meet at 6:00. He will try to do some in advance. He did the most recent one and e-mailed it back.

Lisa Comeau asks what date we are talking about.

Mr. Ledgett says the subject is the notice requirements for the state on the referenda.

Chairman White asks if there are any other business matters before we resume.

There are none.

Chairman White says that we might have some possibility to reduce parking. He also asks the applicant to look at some grass pavers for overflow parking, for example.

Mr. Ledgett asks if the current parking includes the current rec. center.

Chairman White asks for confirmation that there is no proposal to remove the other building.

Mr. Conway says that is correct. They do not know what the use would be. It would be a public building. The other thing he had is that he sees that it says at one point in the ordinance that a permit will not necessarily be approved and at the beginning of the wetland section it lists the valuable functions that a wetland could serve. This could be in conflict.

Mr. Mangiafico says that the existing wetland is already doing that. If they are creating impervious surface, they should not use the wetland for that.

Mr. Ledgett says that if there is a dispute over the boundary, the dispute is settled by a certified ME soil scientist.

Chairman White says that we have heard quite often in presentations the history of wetlands. Has that affected our view of whether the wetland can be altered or expanded? Is it all on a level playing field and are all treated the same? There is no judgment in the ordinance. His recollection, though, is that just because a farmer created it, doesn't make it of lower value, but it can affect our view.

Mr. Ledgett attempts to respond.

Mr. Mangiafico moves to extend the meeting to 10:15 pm. The idea is to get out the issues.

Chairman White seconds.

2 in favor. Motion fails.

Mr. Conway says that the ordinance is clear in terms of wetland values. It defines classes 1,2, and 3.

Mr. Ledgett says those don't apply to this.

Chairman White says that the applicant needs to really take a look at the language about no practicable alternative.

Mr. Conway thanks the Board.

5. PLANNER'S TIME

N/A

6. **OLD BUSINESS: REVIEW PREVIOUS MEETING MINUTES**

N/A

7. **ADJOURNMENT**

Meeting ends by rule at 10:00 pm.